

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 1414 of 2019

1. S. Lucia
2. M. Vijayalakshmi
3. S. Soosai Mary
4. M. Sujatha
5. S. Amala
6. T. Prabhavathy
7. R. Magi Philomena Appellants/Petitioners

-vs-

1. The Government of Tamil Nadu,
Rep. by the Secretary to the Government,
School Education Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Directorate of Elementary Education,
College Road,
Chennai - 600 006.
3. The Educational Officer,
Coimbatore
4. The District Educational Officer,
Coimbatore.
5. The Correspondent,
Bishop Oubagaram High School,
R.S. Puram,
Coimbatore -2.

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6. The Correspondent,
Agnes Middles School,
Fort,
Coimbatore-2.

... Respondents/Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order made in W.P. No. 30881 of 2018 and direct the Respondents to consider the Representations dated 11.10.2018 in accordance with the order made in W.A. No. 1744 of 2015 (batch of Petitions) passed by the Full Bench of this Court dated 09.12.2016 thus extending the relief of G.O. Ms. No. 216 dated 22.03.1993 to all the appropriate secondary grade teaching staff in accordance with law.

W.P.No.30881 of 2018:Filed under Article 226 of Constitution of India to issue a Writ in the nature of Mandamus to consider the petitioners representation dated 11-10-2018 in accordance with the order made in WA.1744/2015(Batch of Petitions) passed by the (full bench) of this Honble court dated 9-12-2016 thus extending the relief of the G.O.M.S.NO 216 dated 22-3-1993 to all the appropriate secondary teaching staff who are eligible for selection grade and special grade pay.

For Appellants : Mr. Surya Senthil

For Respondents: Mr. C. Munusamy,
Special Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 15.03.2019 in W.P. No. 30881 of 2018 passed by the Learned Judge of this Court.

2. The Government of Tamil Nadu had issued G.O. Ms. No. 216, Finance (Pay Cell) Department dated 22.03.1993, in which it had been provided in para 3(ii) as follows:-

"In respect of Secondary Grade Teachers in High Schools there is no promotion post for them as on 28.03.1990 (i.e., the date of issue of the G.O. second read above), although there is promotion post in respect of all Secondary Grade Teachers, Government direct that the Teachers be made eligible for Selection/Special Grades as in Annexure-I to the G.O. second read above."

Subsequently, by G.O. Ms. No. 62, Finance (CMPC) Department dated 09.03.2015, the Government of Tamil Nadu made the following amendment to para 3(ii) of the aforesaid Governmental order, which reads as follows:-

"7) Accordingly, the following amendment is issued to para-3(ii) of the Government Order fourth read above:-

(1) In respect of Secondary Grade Teachers in High Schools/Higher Secondary Schools there is no promotion post for them. Whereas, there is a promotion post for the Secondary Grade Teachers in Primary Schools, viz., Primary School Headmaster which envisages the restrictive proviso in para--4 of G.O. Ms. No. 304, Finance (PC) Department, dated: 28.03.1990. As a measure of uniformity in the Selection Grade/Special Grade scales of pay of Secondary Grade Teachers Government directed that the Secondary Grade Teachers in all schools be made eligible for the Selection Grade/Special Grade scales of pay as indicated in the Annexure-I to the Government Order third read above.

(2) The Selection Grade/Special Grade scales of pay indicated in the Annexure-I to the G.O. Ms. No. 304, Finance (Pay Cell) Department, dated: 28.03.1990 is applicable for the Fifth Tamil Nadu Pay Commission period only i.e. from 01.06.1988 to 31.12.1995. As such, the benefit of Selection Grade/Special Grade scales of pay as contemplated in para-3 (ii) of G.O. Ms. No. 216, Finance (Pay Cell) Department, dated: 22.03.1993 shall be made applicable only to the cases of Secondary Grade Teachers and other employees who were awarded Selection Grade/Special Grade between 01.06.1988 and 31.12.1995 and the same cannot be extended beyond this date as subsequent Pay Commission revisions were implemented with effect from 01.01.1996 and 01.01.2006 respectively on par with the counterparts in Government of India.

(3) As the Secondary Grade Teachers in Primary Schools in the feeder category for the post of Primary School Headmaster, they were allowed to count the services rendered on Identical scales of pay prior to 01.06.1988 in the post of Secondary Grade Teachers for awarding Selection Grade/Special Grade in the promotion post of Primary School Headmaster. In the case of Special Teachers and Physical Education Teachers they have no chance of promotion as Primary School Headmaster and are not considered as a feeder category to the post of Primary School Headmaster with reference to Rule-2 of Tamil Nadu Elementary Education Subordinate Service Special Rules. Hence, the Special Teachers/Physical Education Teachers are not entitled for Selection Grade/Special Grade applicable to the

post of Primary School Headmaster considering the services rendered in the post of Special Teachers/Physical Education Teachers."

3. The Appellants, who have joined service as Secondary Grade Teachers and continued in that capacity till their retirement, earlier filed W.P. Nos. 28472 to 28477 of 2015 in this Court seeking a direction to the Respondents to take appropriate action upon their representations dated 20.06.2015 in the light of G.O. Ms. No. 62, Finance (CMPC) Department dated 09.03.2015 issued by the Government of Tamil Nadu. The Learned Judge, who heard the matter, by order dated 10.09.2015 disposed the aforesaid Writ Petitions, holding as follows:-

"5. This Court, taking into consideration, the limited scope of prayer sought for by the petitioner, directs the 4th respondent to consider and dispose of the petitioner's representation dated 20.06.2015 on merits and in accordance with law and pass orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner herein."

4. Before the representations of the Appellants were taken up for disposal by the Respondents, the Division Bench of this Court in W.P. (MD) No. 7061 of 2011 etc., batch, which were filed seeking to extend the benefit of G.O. Ms. No. 216, Finance (Pay Cell) Department dated 22.03.1993, dismissed those Writ Petitions and observed as follows:-

"15. The post of Secondary Grade Teacher carry ordinary scale of pay of Rs.1200-2040. Therefore, it fell under Sl.No.8 of the above Table. As a consequence, the selection grade scale of pay for the posts was Rs.1400-2600, the Special Grade Scale of Pay was Rs.1640-2900. But, unfortunately, the teachers started thinking that they would be entitled to selection grade scale of pay of Rs.1640-2900 and special grade pay of Rs.2000-3200. That was never the purport of G.O.Ms.No. 304 and 216.

16. One more reason as to why the petitioners cannot have any of the benefits is that they were not even Secondary Grade Teachers. The Secondary Grade Teachers themselves came up with a mistaken impression. Taking clue from them, teachers who were Special Teachers and Physical Education Teachers started having a jolly ride on the back of the Secondary Grade Teachers, at the cost of the exchequer.

17. It is also stated that the Government had already passed a Government Order in G.O.Ms.No.62, Finance (CMPC) Department, 09.03.2015, and that therefore the petitioners are entitled to the benefit of the said Government Order. However, it is stated by the learned Special Government Pleader that the Government is already considering a proposal to withdraw the said Government Order. Strong reliance is placed upon paragraph 7(2) of the Government Order in G.O.Ms.No.62, Finance (CMPC) Department, dated 09.03.2013. In our opinion, G.O.Ms.No.62 itself is thoroughly misconceived. We wonder as to why G.O.62 has not so far been revoked by the Government. We direct the respondents to pass orders, at the earliest.

18. Apart from the above, the petitioners are guilty of delay and laches. These writ petitions are filed mostly after 19 to 23 years of the Government Order. The contention that the Government Servants have a continuing cause of action is wholly misconceived.

19. Therefore, in the light of the law laid down by the Supreme Court, all the writ petitions deserve to be dismissed and accordingly dismissed. Connected miscellaneous petitions are closed."

5. As a sequel to the aforesaid decision of this Court, the Government of Tamil issued G.O. Ms. No. 96 dated 17.03.2016 withdrawing the G.O. Ms. No. 62, dated 09.03.2015 stating that the question of granting the payment of Primary School Head Master without actually getting regular promotion does not arise and that the Secondary Grade Teachers in High/Higher Secondary Schools, classified under the Tamil Nadu Educational Subordinate Service shall not have right for promotion as Primary School Head Master in Primary/Middle Schools classified under the Tamil Nadu Elementary Education Service and as such, the Secondary Grade Teachers in High/Higher Secondary Schools cannot claim the pay scales of the Primary School Head Master by counting the service rendered in the post of Secondary Grade Teacher.

6. In the meanwhile, the representations of the Appellants were rejected by the District Educational Officer, Coimbatore by proceedings Na. Ka. No. 6333/A3/2015 dated 09.02.2016, relying on the decision of the Hon'ble Supreme Court of India in Director of School Education -vs- A.N. Kandaswamy [(1998) 8 SCC 26] in which it has been held as follows:-

"8. The respondents had willingly joined Government High School service, and therefore, they thereafter belonged to a separate cadre known as secondary education service. On their absorption in government service, they ceased to be a part of the cadre of teachers serving in schools run by the Panchayat Union. Merely because their past services were counted for the purpose of protecting their "pay" and awarding selection or special grade, it cannot be said that they continued to belong to the same old cadre. The very basis on which the Tribunal proceeded was wrong and therefore its decision stands vitiated."

The Appellants did not challenged the said order of rejection and the same has attained finality.

7. On noticing that there has been conflict of views by various Division Benches on the question relating to extension of the benefit conferred by the aforesaid Governmental Orders to similarly placed persons, the First Bench of this Court in W.A. (MD) No. 145 of 2016 etc., batch, by order dated 04.10.2016 referred the matter to the Full Bench of this Court.

8. The Full Bench of this Court in Government of Tamil Nadu -vs- G. Eswaran [(2017) 2 MLJ 257 (FB)], after considering the submissions of all parties, held as follows:-

"38. Today, when the matters are taken up for consideration, keeping in mind the financial strain that would fall on the State exchequer in the event of implementation of the G.O., and in order to give a quietus to the issue, we feel it appropriate to fix the date as 01.03.2017 from which date onwards, the Government shall calculate and revise the pension and family pension (without arrears) based on the revised scales of pay by implementing the G.O., for which, the learned Advocate General and the learned counsels appearing for the Teachers have fairly acceded to the same. Accordingly, we pass the following:

(i) The Government is directed to implement the G.O. Ms. No. 216, dated 22.03.1993 for the period between 01.06.1988 and 31.12.1995, on and from 01.03.2017 onwards in respect of all the Secondary Grade Teachers of High/Higher Secondary Schools including the Special Teachers who attained Selection grade/Special Grade during the above said period, on par with the pay scale of Primary School Headmasters;

(ii) Consequently, the Government shall calculate and revise the pension of those who retired from service and revise the family pension in respect of those who expired, based on the revised scales of pay in terms of

G.O. Ms. No. 216, dated 22.03.1993 payable on and from 01.03.2017;

(iii) It is made clear that the beneficiaries under this order, are not entitled to the arrears of revised pay scales;

(iv) It is further made clear that the benefits as directed above, shall be extended to the parties who are before this Court alone and no fresh Writ Petitions would be entertained on and from 09.12.2016;

(v) The Government is directed to expedite the process of calculating and fixing the revised pension and family pension and we do hope that the Government will complete the same as early as possible without making any further delay;

(vi) All the matters which are at SR stage and listed before this Court are also ordered and disposed of by this common order and consequently, connected MPs thereof, are ordered;"

The Full Bench of this Court in the aforesaid order has made it very clear and categorical in para 38(iv) that no fresh Writ Petition shall be entertained on and from 09.12.2016. However, long thereafter on 26.10.2018, the Appellants filed W.P. No. 30881 of 2018 for a direction to the Respondents to consider their representations dated 11.10.2018 in accordance with the aforesaid order passed in the Full Bench of this Court by extending the benefit of G.O. Ms. No. 216, Finance (Pay Cell) Department dated 22.03.1993 to all appropriate teaching staff who are eligible for Selection Grade and Special Grade pay. The Writ Court by order dated 15.03.2019 dismissed that Writ Petition, aggrieved by which the Appellants have preferred this appeal.

9. We have heard Mr. Surya Senthil, Learned Counsel appearing for the Appellants, Mr. C. Munusamy, Learned Special Government Pleader appearing on behalf of the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

10. The Learned Counsel for the Appellants vehemently contended that the Appellants cannot be deprived of the benefit of the order passed by the Full Bench merely because it has been held at para 38(iv) of that order that no fresh Writ Petition shall be entertained on and from 09.12.2016 inasmuch as the Appellants had earlier approached this Court by way of W.P. Nos. 28472 to 28477 of 2015 in which directions have been issued to dispose their representations dated 20.06.2015 and they ought to have been extended the same benefit granted by the First Bench of this Court to similarly placed persons, even though their representations had been rejected on 09.02.2016.

11. We are unable to countenance the aforesaid submission made by the Learned Counsel of the Appellants. In pursuance of the earlier order dated 10.09.2015 in W.P. Nos. 28472 to 28477 of 2015 passed by this Court, the District Educational Officer, Coimbatore by order dated 09.02.2016 rejected the representations dated 20.06.2015 made by the Appellants and the Appellants have accepted the same to become final as they had not challenged those orders in a manner recognized by law. In fact, even in W.P. No. 30881 of 2018, the Appellants had not assailed those orders and only wanted disposal of their fresh representations dated 11.10.2018 relying on the subsequent decision of the Full Bench of this Court. We are of the considered view that it was not at all open to the Appellants to resurrect a rejected claim under the guise of making fresh representation citing the decision of the Full Bench of this Court. When the Full Bench of this Court has expressly held that no Writ Petition shall be entertained after 09.12.2016, the Appellants cannot circumvent that impediment by portraying as if that they were only seeking to dispose their representations. It is needless to point out here that resort to such innocuous device of seeking disposal of representations of claims, which have already been rejected, has been strongly deprecated by the Hon'ble Supreme Court of India in C. Jacob -vs- Director of Geology and Mining [(2008) 10 SCC 115] and Government of India -vs- P. Venkatesh (Order dated 01.03.2019 in Civil Appeal No. 2425 of 2019).

12. As we do not find any merit in the claim made by the Appellants, we confirm the order dated 15.03.2019 in W.P. No. 30881 of 2018 and dismiss the Writ Appeal. No costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

To

1. The Secretary to the Government of Tamil Nadu,
School Education Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Directorate of Elementary Education,
College Road,
Chennai - 600 006.

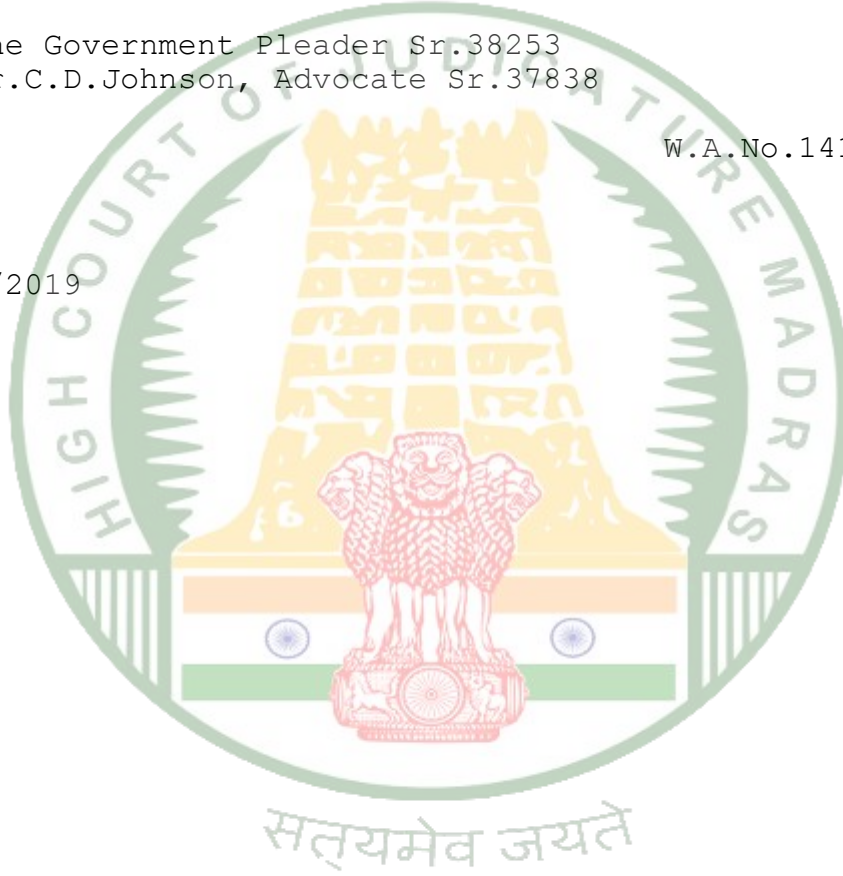
3. The Educational Officer,
Coimbatore

4. The District Educational Officer,
Coimbatore.

+1cc to the Government Pleader Sr.38253
+1cc to Mr.C.D.Johnson, Advocate Sr.37838

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